As I have stated above, the plaintiffs supplied the goods to the defendant firm and not to Yong Yit Chong personally, and Yong Yit Chong ordered goods as agent of the firm. Section 137 of the Ordinance provides that, as between the principal and third persons, any person may become an agent, although a minor cannot become an agent, so as to be responsible to his principal. Under section 200 of the Ordinance, a person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm. Section 201 of the Ordinance says that a person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

The effect of the provisions of the Ordinance to which I have referred, may be stated to be as follows. A minor can be a partner in the limited sense that he can be admitted to the benefits of partnership. His share in the property of the firm, to the benefits of which he is admitted, is liable for the obligations of the firm, but he is not personally liable for such obligations. He can order goods as agent of the partnership, which in effect means as agent of the other partner or partners of the firm, so as to bind the firm or the partners with liability, without incurring personal liability. If on attaining the age of majority he does not repudiate the partnership within a reasonable time, he becomes liable for all obligations incurred by the partnership from the time he was admitted to the benefits of the partnership.

I find support for the above propositions of law in the Indian case of *Gopi Mal Durga Das* v. *Jain Bank of India Ltd. Lahore.*[3] In that case Durga Das, purporting to act on behalf of the firm Gopi Mal Durga Das, consisting of himself and his father Gopi Mal, applied for shares in the Jain Bank of India Limited and paid Rs. 40 with the application. The shares were duly allotted to the firm, and the letter of allotment was posted and presumably reached its destination. It was held that the fact that at the time of the application Durga Das was not *sui juris,* did not vitiate the contract between the Bank on one side and the firm on the other, and that the firm was liable on the shares. Durga Das was held equally liable because he did not give notice within reasonable time after attaining majority of his repudiation. In the case of *Parkash Chand* v. *Strauss & Co. Ltd., Karachi* [4] it was stated that a minor can be appointed an agent so as to bind the principal without incurring any personal liability and that it is the capacity of the principal to enter into a contract which determines the binding nature or otherwise of the contract.

In the present case Yong Yit Chong became entitled to the benefits of the defendant firm when the partnership was registered and when an account in the name of the partnership was opened with the Bangkok Bank. He ordered goods from the plaintiff company for the partnership. Whether he used the goods for the partnership or for himself is immaterial because the plaintiffs were supplying goods on his orders not to him personally but to the defendant firm. Yong Yit Chong was then a minor. As a minor partner he could, and in fact did, act as agent for the firm as well as the other partner. He could not then be made personally liable for the goods he ordered for the firm, but the firm was liable. He has since attained the age of majority and has not up to now repudiated the partnership. He is therefore now equally liable for the goods which were purchased during his minority.

In the result, upon consideration of the whole of the evidence in this case, I have come to the conclusions that "Chan & Yong Trading" and "Chan & Yong Trading Company" are one and the same partnership, that Chan Yin Tee who has been served with the writ in these proceedings as a partner of the defendant firm was at all material times the partner of the firm, that the defendant firm is indebted to the plaintiff company for the amount claimed and that both Chan Yin Tee and Yong Yit Chong are liable as partners to satisfy that debt. I must hasten to add that Yong Yit Chong becomes liable because he has not taken any steps since attaining the age of majority to repudiate the partnership. This action is brought against the firm. There will therefore be judgment against the firm for $12,734.91 and costs.

Judgment against the firm.

Solicitors: *Shook Lin & Bok*; *M. J. Mathew.*

KHALID PANJANG & ORS. v. PUBLIC PROSECUTOR (No. 2)

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Tan Ah Tah J.) January 6, 1964]

[K.L. — Federal Court Criminal Appeal No. 6 of 1963]

Criminal Procedure—Corroboration—Direction to jury—Inadequacy.

Precedent—Privy Council decision on Indian statutory provision in pari materia to local provision—Whether Malaysia Judge is bound by such Privy Council decision.

Evidence—Conspiracy—Evidence Ordinance, 1950, s. 10.

In this case the trial Judge on a point of corroboration directed the jury as follows:—

"The evidence of Che Bi, P.W. 28, has been challenged and all that I can say to you is this: you must check

Che Bi's evidence, satisfy yourself that he is a truthful witness before you act upon it, check it in connection with the facts that you accept as proved. Che Bi is not an accomplice as was asserted by one of the counsel. His evidence in law does not require corroboration although from the nature and the seriousness of it a little caution in looking for corroboration is required."

Held: to tell the jury that "a little caution in looking for corroboration is required" was wholly inadequate both by reason of the lack of emphasis and because it was not explained that to be of any value corroboration of a witness' evidence must consist of evidence from an independent quarter and tending to implicate the accused and must corroborate the evidence of the first witness in a material particular implicating the accused.

Although the trial Judge's attention was brought to the Privy Council case of *Mirza Akbar* v. *The King-Emperor* (3) and to the decision of the Court of Appeal of the Federation of Malaya in *Liew Kaling & Ors.* v. *Public Prosecutor* (4) where the above Privy Council case was followed, he refused to follow them on the ground that the Privy Council case was wrongly decided or alternatively that even if the words of Lord Wright were a correct statement of the law in this country as opposed to the law in England, they were not applicable to the facts of the present case.

Held: the Privy Council in *Mirza Akbar's* case were discussing a section of an Indian statute which is identical to the corresponding section of the local statute. In these circumstances that case is binding on this Court and a *fortiori* it is binding on every High Court in Malaysia and no Judge is at liberty, whatever his private opinion to disregard it.

Observations on section 10 of Evidence Ordinance.

Cases referred to:—

(1) *Barendra Kumar Ghosh* v. *The King-Emperor* 52 I.A. 40.

(2) *Lee Fook Sam* v. *Public Prosecutor* [1963] M.L.J. 371.

(3) *Mirza Akbar* v. *The King-Emperor* L.R. 67 I.A. 336, 348.

(4) *Liew Kaling & Ors.* v. *Public Prosecutor* [1960] M.L.J. 306.

FEDERAL COURT.

D. R. Seenivasagam for appellants Nos. 1 and 3.

E. K. Yeap for appellant No. 2.

S. A. Raj for appellant No. 4.

Mohamed bin Yaacob (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal from a decision of the High Court at Ipoh.

There is little room for doubt as to the nature of the incident which was the subject of the trial.

About 1.15 p.m. on Saturday, 6th April, 1963, a Mr. Baxter, the assistant manager of Riverview Estate, left his headquarters to pay the labourers on the Jeta and Chendrong divisions of that estate. He was driving a "Citroen" motor car and was armed with a pistol. He was accompanied by a watchman, named Yatim, who was armed with a shotgun. The money for the labourers' wages, which amounted to about $13,500 in notes of various denominations from $50 downwards and in coins, was contained in two aluminium boxes which were in the boot of the car.

Neither Baxter nor Yatim was again seen alive. About an hour after leaving Riverview Estate the car was found burning on the side of an estate road near Jeta. In front of it was a log of wood that had not been on the road between 1.30 and 1.45 p.m. In it were the badly charred dead bodies of Baxter and Yatim and on subsequent examination it was found that Baxter had died as a result of wounds from a shotgun fired at close range. Shotgun pellets were found in his body and in the burned out car and shotgun wads and three expended shells were found in and about the wreckage of the car. The boxes of money were missing and Baxter's pistol and Yatim's shotgun were also missing though the shotgun was later found nearby.

On all that it was clear that murder and robbery had been committed by some person or persons and it was thought that the persons responsible were one Mat Piah, one Maree and the present four appellants, Khalid, Zilah, Jalaluddin and Hamid.

In the circumstances one would have expected these six persons to be prosecuted for murder in contravention of section 302 of the Penal Code, individual liability being imputed in each case by reason of section 34. After all, it is well settled law that if a number of persons go to a place with a common intention to rob and if necessary for the purpose of robbery to kill a person and that person is killed by one of them each of them is guilty of murder, whichever of them fired the fatal shot (see *Barendra Kumar Ghosh* v. *The King-Emperor* (1) and *Lee Fook Sam* v. *Public Prosecutor* (2)).

This, however, was not done and the six accused persons were prosecuted on a charge of gang robbery and murder in contravention of section 396 of the Penal Code. The particulars of the charge read as follows:—

> "That you, on the 6th day of April, 1963 at about 1.40 p.m. at Jeta Estate, in the district of Kinta, in the State of Perak, conjointly committed gang robbery, and that in the commission of such gang robbery D. F. Baxter was murdered by one of you,"

On that charge all the accused claimed trial.

At the close of the case for the prosecution the trial Judge held that there was no evidence against Maree and discharged him.

Then, of his own notion and without any application from counsel on either side, he proceeded to amend the charges against all the other accused.

As regards the accused Khalid he took the view that on the prosecution evidence he was not

present at the scene of the crime when it was committed. He accordingly amended the charge against him to one of being a member of a criminal conspiracy to commit gang robbery in contravention of sections 120B and 395 of the Penal Code.

As regards Mat Piah, Jalaluddin and Hamid he took the view that there was no evidence of more than four people taking part in the robbery and so there could be no question of gang robbery and that there was no evidence of any intention on the part of those three accused to commit murder as distinct from robbery. He accordingly amended the charge against them to one under section 394 of the Code of being concerned in a robbery in which hurt was voluntarily caused.

He then amended the charge against Zilah to one of murder in contravention of section 302 of the Code and he framed an additional charge against him under section 394 of being concerned in a robbery in which hurt was voluntarily caused.

The accused claimed trial on the amended charge and the trial proceeded on them, apparently without any objection being raised by any of the defence counsel, and in the event they were all found guilty on all the amended charges. Khalid was sentenced to six years' imprisonment; Mat Piah, Jalaluddin and Hamid were each sentenced to eight years' imprisonment and a whipping of eight strokes; Zilah was sentenced to death on the murder conviction and in respect of the offence in contravention of section 394 sentence was deferred.

Against these convictions and sentences Khalid, Zilah, Jalaluddin and Hamid have now appealed. Mat Piah has not appealed.

At this stage it will be convenient to deal with the prosecution evidence.

The only witness whose evidence implicated all the five accused who were convicted was one Che Bi, a small property owner living near Batu Gajah. His story was that on 1st April, Khalid, Zilah and a boy came to his house. He had previously known Khalid, to whom he is related, but had not previously met Zilah. Khalid said Zilah wanted to borrow $300 on the security of some rubber land. After some discussion it was decided that the witness should view this land on 5th April. On 5th April Khalid and Mat Piah came to his house in a Morris Minor motor car. They went to Ipoh, then to Pusing and then to a spot on the Tronoh/Tanjong Tuallang Road near where the robbery took place the following day. There they met Zilah, Jalaluddin and Hamid who were already there. Nothing was said about any land but Zilah told him he should "go along with him" to rob a European and told him to bring his gun the following day. The witness had lent his gun to his son-in-law and he did not agree to bring it. Khalid, Mat Piah and he then went home. The following morning about 9 a.m. Khalid came to his house in the same Morris Minor car and said that he could now see the land and that Zilah had given him $10 for expenses. They left together to proceed to Ipoh and on the way picked up a man Han. In Ipoh they went to have tea and were joined by Mat Piah. They then went to Pusing and picked up Maree and from there they went to the same spot as they had visited the previous day. Zilah, Jalaluddin and Hamid were already there. Zilah was holding a shotgun. There was some argument between Khalid and Zilah because the witness had not brought his gun. On this he said he did not want to bring his gun and asked Khalid to take him home. Khalid and he then went to Batu Gajah taking Maree and Han with them. As they left Zilah was still holding the gun.

Up to a point Che Bi's evidence as to what occurred on 6th April was supported by Han. He was picked up by a car driven by Khalid in which Che Bi was a passenger. They went to Ipoh where they were joined by Mat Piah. Later they picked up Maree and went to the spot on the Tronoh Road where the others left him for half an hour while he remained with the car. They then returned and the whole party went to Batu Gajah.

Earlier one Mohamed Nor had given evidence which implicated Khalid, Mat Piah (who was his brother) and Zilah. He said that about 10.30 p.m. on 6th April Mat Piah came to his house and said he had come from Batu Gajah.

> "He told me that he had just shot at somebody and had robbed someone at Batu Gajah. I asked him how many took part and he said about 4 or 5 of them. He gave me names of 4 Zilah, Khalid, Zaharia and Yeop. He mentioned amount as $13,000. I asked him who had shot and he said it was Zilah who shot. He said he had shot with a shotgun."

Mat Piah then gave the witness $100 in $50 notes one of which the witness returned to him. The witness later reported the matter to the police.

The only other evidence, apart from police evidence, was that of a Shift Engineer at Tanjong Tuallang under whom Jalaluddin was employed. He said that on 6th April Jalaluddin should have been at his work at 3 p.m. but did not turn up until 5 p.m.

Various police officers gave evidence which was not seriously contradicted regarding the finding of certain articles. At two spots near Mat Piah's house indicated by him they found two amounts each of $1,600 in $50, $10 and $5 notes, the empty boxes which had contained the stolen money, a number of empty pay envelopes which had contained some of the stolen money and Baxter's pistol which had not been fired.

At two spots indicated by Zilah they found a bag containing about $100 in coins, a milk tin containing about $4,500 in notes and in his house they found a pair of khaki trousers with a small stain which was found to be human blood. At a spot indicated by Jalaluddin they found $4,438 in notes and in his house they found $100 in $10 notes and a shotgun cartridge.

At this stage it must be observed (this is one of the grounds of appeal) that so far as concerned Khalid and Zilah the evidence of Mohamed Noor was not admissible. There was clearly some sort of conspiracy and for the purpose of considering the admissibility of this evidence it is immaterial whether the object of the conspiracy and the common intention of the conspirators was to kill and rob Baxter or only to rob him. But both these purposes were completed prior to 2.30 p.m. on 6th April, for at 2.30 p.m. Baxter was dead, his motor car had been set on fire, and the money had been removed from it. Mohamed Noor's evidence was of something that was said to him by Mat Piah some eight hours later and was said in the absence of Khalid and Zilah. As against himself what Mat Piah said was, of course, admissible as an admission. As against Khalid and Zilah, however, it could only be admissible by reason of section 10 of the Evidence Ordinance. But in the circumstances section 10 had no application. In the case of *Mirza Akbar* v. *The King-Emperor* [3] their Lordships of the Privy Council said this with regard to section 10 of the Indian Evidence Act (*per* Lord Wright) :—

> "Where the evidence is admissible it is, in their Lordships' judgment, on the principle that the thing done, written or spoken, was something done in carrying out the conspiracy, and was receivable as a step in the proof of the conspiracy.
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> . . . . . .
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> This being the principle, their Lordships think the words of s. 10 must be construed in accordance with it, and are not capable of being widely construed so as to include a statement made by one conspirator, in the absence of the other, with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgment, the words 'common intention' signify a common intention existing at the time when the thing was said, done or written by the one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative, or statement or confession made to a third party after the common intention or conspiracy was no longer operating, and had ceased to exist, is admissible against the other party. There is, then, no common intention of the conspirators to which the statement can have reference. In their Lordships' judgment, s. 10 embodies this principle."

That case was followed by the Court of Appeal of the Federation of Malaya in the case of *Liew Kaling & Ors.* v. *Public Prosecutor.* [4]

In the present case, however, the trial Judge, although both cases were brought to his notice, refused to follow them on the ground that *Mirza Akbar* v. *The King-Emperor, supra,* was wrongly decided or alternatively that the words of Lord Wright "even if they are a correct statement of the law in this country as opposed to the law in England" were not applicable to the facts of the present case.

All we have to say is that the Privy Council were not discussing the law of England. They were discussing a section in an Indian statute which is word for word the same as the corresponding section of a local statute. In these circumstances a decision of their Lordships is binding on this Court and a *fortiori* it is binding on every High Court in Malaysia and no Judge is at liberty, whatever his private opinion may be, to disregard it. Moreover, the principle enunciated by their Lordships was clearly applicable to the present case for here, as in *Mirza Akbar* and *Liew Kaling*, the evidence in question was of a statement of a conspirator made after the conspiracy had been completed.

Disregarding the inadmissible portions of Mohamed Noor's evidence, the remaining evidence against the four appellants and their defences were as follows.

Against Khalid there was the evidence of Che Bi and of Han. His defence (which was not made on oath) was a simple denial of taking part in any conspiracy or robbery.

Against Zilah there was the evidence of Che Bi together with the fact that the police found two sums of money amounting to about $4,600 in two spots indicated by him near his house and they also found in his house a pair of trousers with a stain of human blood. His defence was that on 5th April he had been on his own land which was near the scene of the crime with the intention of showing the land to Che Bi from whom he wished to borrow money. As regards the 6th of April he denied having been at the meeting described by Che Bi. He had been working alone on his own land which was near the scene of the crime but had gone home before the crime took place and he knew nothing of it. Later, however, his brother told him he had found and hidden some money. At this time he knew nothing of the crime and later when he learned of it he showed the money to the police. As regards the stain of blood on the trousers found in his house, this might have been the result of a leech bite and leeches were common in the neighbourhood.

Against Jalaluddin there was the evidence of Che Bi and the evidence that he was two hours late for work on 6th April. There was also the evidence that he led the police to a spot near his house where they found about $4,500 in notes and the largely neutral evidence that a single

shotgun shell was found in his house. His defence was a complete denial of any knowledge of the affairs.

Against Hamid the only evidence was that of Che Bi. His defence was that the visit to the scene of the crime was a perfectly innocent one to view a piece of land and that he had no knowledge of any robbery and did not see a gun at any time.

Now on all that it is clear that unless the evidence of Che Bi was accepted as true in every respect there was no evidence to justify the conviction of, at any rate, two of the appellants.

In the circumstances the evidence of Che Bi demanded the most careful scrutiny. This, however, is how the trial Judge dealt with it in his summing up to the jury:—

"The evidence of Che Bi, P.W. 28, has been challenged and all that I can say to you is this: you must check Che Bi's evidence, satisfy yourself that he is a truthful witness before you act upon it, check it in connection with the facts that you accept as proved. Che Bi is not an accomplice as was asserted by one of the counsel. His evidence in law does not require corroboration although from the nature and the seriousness of it a little caution in looking for corroboration is required. As the D.P.P. pointed out to you even if you have to look for corroboration there is corroboration of everything except the statement that the shot was fired by Zilah."

In our view that passage calls for criticism.

In our view to tell the jury that "a little caution in looking for corroboration is required" was wholly inadequate both by reason of the lack of emphasis and because it was not explained that to be of any value corroboration of a witness' evidence must consist of evidence proceeding from an independent quarter and tending to implicate the accused and must corroborate the evidence of the first witness in a material particular implicating the accused. Again, it was a misdirection to say that there was "corroboration of everything except the statement that the shot was fired by Zilah". There was not a scrap of corroboration as regards Hamid. The only corroboration as regards Khalid was that of Han on a point that was just as consistent with innocence as with guilt. And the witness did not say that the shot was fired by Zilah. What he did say was that some time before the killing the only gun at the scene was in the hands of Zilah.

Having reached the conclusion we have stated we are now in a position to deal with the appeals of Khalid and Hamid and the appeal of Zilah against his conviction for murder.

As regards Khalid the only evidence of substance against him was that of Che Bi to the effect that on one occasion he came to Che Bi's house with Zilah when there was some talk of a loan and on the day of the crime he took Che Bi to the scene ostensibly to see the land which Zilah proposed to offer as security for the loan and then left with Che Bi before anything wrong was done. This, however, is very far from that he was a conspirator with those concerned in the robbery. The evidence is just as consistent with his innocence as with his guilt for it is quite consistent with the possibility that both he and Che Bi genuinely believed the story about the land and it is to be noted there is absolutely nothing else in the evidence, no possession of stolen property or anything of the sort, to suggest criminality on his part. Moreover as regards him there was misdirection in that the jury were directed that his evidence was corroborated by Mohamed Noor. That evidence was, of course, inadmissible but even if it had been admissible it did not corroborate that of Che Bi but contradicted it for it was to the effect that Khalid took part in the robbery, not that he left the scene before it took place. In the circumstances his conviction must be quashed.

As regards Hamid the only evidence against him was the uncorroborated evidence of Che Bi and here again there was misdirection for the jury were told there was corroboration of Che Bi's evidence as regards him when in fact there was none. In the circumstances his conviction must also be quashed.

As regards Zilah's conviction for murder, the situation when the question fell to be decided by the jury was that as a result of the amendment of the charges which had taken place at the close of the prosecution case that case was that Zilah fired the fatal shot and that he, and he alone, had an intention to kill. Any question of intention on the part of anyone else was negatived, there could be no question of any common intention to kill, although, of course there was still the allegation of a common intention to rob. Now the only evidence that went to show that the killing was done by Zilah rather than anybody else was the evidence of Mohamed Noor which was inadmissible and the evidence of Che Bi regarding which there was the unfortunate misdirection which we have mentioned. In the circumstances the conviction cannot stand.

As regards the convictions of Zilah and Jalaluddin for robbery the appeal is based on a number of criticisms of the Judge's summing-up. In our opinion portions of the summing-up were far from satisfactory. We do not, however, find it necessary to discuss it in detail because in our view on the evidence as a whole and particularly the evidence which traced some $12,500 out of $13,500 stolen to these two appellants and Mat Piah in roughly equal shares we do not think any reasonable jury would have refrained from convicting these accused for robbery.

The appeals of Zilah and Jalaluddin against their convictions for robbery are accordingly dis-

missed and on Zilah we impose a sentence of eight years' imprisonment.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons*; *Yeap & Yeap*; *Raj & Co.*

PUBLIC PROSECUTOR v. ROUTLEY

[R.Cr.J. (Simpson J.) January 16, 1964]

[Jesselton — Criminal Revision No. 1 of 1964]

Criminal Procedure—Plea of guilty by letter—Road Traffic Ordinance (Sabah Cap. 128), s. 16—Criminal Procedure Code (Sabah No. 4 of 1959), s. 169(2).

Road Traffic Ordinance (Sabah Cap. 128), s. 16(1) & (2)—Riding motorcycle under influence of drink—Offence under s. 16(1)—Pleading guilty by post—Whether acceptance of plea by Magistrate correct—Endorsement of licence—Sentence.

A plea of guilty by letter cannot be accepted from an accused charged under section 16(1) of the Road Traffic Ordinance (Sabah Cap. 128) because the maximum punishment permitted under that section is 12 months imprisonment whereas pleas by way of letters can only be accepted in respect of offences which do not carry a maximum punishment beyond 6 months imprisonment.

CRIMINAL REVISION.

Simpson J.: The accused was charged with riding a motorcycle under the influence of drink to such an extent as to be incapable of having proper control, an offence under section 16(1) of the Road Traffic Ordinance (Cap. 128).

He pleaded guilty by letter, was convicted and fined $10. No other order was made.

This is a serious offence and while the penalty is of course in the discretion of the Magistrate there can be no doubt that a fine of $10 is manifestly inadequate whatever the circumstances. Moreover under section 16(2) the Court is bound to order endorsement of the licence and disqualification for not less than 12 months. The period of disqualification may be reduced or the order dispensed with only on proof of special circumstances. Such special circumstances must be directly connected with the commission of the offence, for example the administration of a drug to a driver without his knowledge. A circumstance peculiar to the offender such as financial hardship cannot normally be taken into account. It is the duty of the Magistrate to point out the result of a conviction for this offence and to ask the offender if he wishes to give evidence of special circumstances.

In this case the accused pleaded guilty by letter. Section 169(2) of the Criminal Procedure Code which deals with pleas of guilty by letter however excludes offences punishable by fine and imprisonment for a period exceeding six months. This offence is punishable under section 16(1) with a fine and imprisonment for 12 months.

An opportunity to plead guilty by letter should not therefore have been afforded to the accused and his plea must be disregarded. I therefore quash the proceedings and order a retrial before the same or another Magistrate. There is nothing to prevent the accused claiming trial should he so wish.

Re-trial ordered.

TAN HONG CHIT v. LIM KIN WAN

[F.C. (Barakbah C.J. (Malaya), Azmi & Suffian JJ.) January 30, 1964]

[Kuala Trengganu — Federal Court Civil Appeal No. 7 of 1963]

Land Laws—Malay reservation land held by non-Malay—Land acquired before it become Malay reservation—Transfer or charge to non-Malay—Whether approval of Ruler-in-Council required—Malay Reservation Enactment, 1930, ss. 3, 7 and 13A(iii).

Interpretation—Disabling statute—Construction in favour of freedom of individual.

Under section 13A(iii) of the Malay Reservation Enactment, 1930, when a piece of land in the Malay Reservation area is registered in the name of a non-Malay who had acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without obtaining the approval of the Ruler-in-Council. But once a non-Malay registered owner transfers or charges the land to a "Malay" as defined in section 3(i) of the Enactment then the new Malay registered owner cannot transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council.

Per Suffian J.: where there is ambiguity as to the meaning of a disabling statute the construction which is in favour of the freedom of the individual should be given effect to.

Decision of Hashim J. ([1963] M.L.J. 100) affirmed.

Case referred to:—

(1) *David* v. *De Silva* [1934] A.C. 106.

FEDERAL COURT.

Wan Mustapha bin Haji Ali for the appellant.

Isahak Hamid for the respondent.

Cur. Adv. Vult.

Suffian J.: Three pieces of lands are involved in this appeal, lots numbers 26, 27 and 29 all in the District of Kota Bahru, Kelantan.

Gan Mek, a Chinese, became the registered proprietor of the first piece on 23rd September 1923 and of the second piece on 26th March 1925 and Choa Bon Sek, also a Chinese, was the registered proprietor of the third piece. Then the Malay Reservation Enactment, 1930, was enacted. By *Gazette* Notification No. 56 dated 9th December, 1930 the administrative district of Kota Bahru, in which these lands are situate, was declared by the Ruler-in-Council under section 4